

HOUSE BILL NO. 326

INTRODUCED BY NEWMAN, CYR, GALLUS, HARRINGTON, LASLOVICH, LEWIS, MCCARTHY, ROME,
SHEA

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE ALLOWABLE TIME PERIOD FOR
AUTHORIZATION OF A TEMPORARY CHANGE OF A WATER APPROPRIATION RIGHT IN THE UPPER
CLARK FORK RIVER BASIN FROM 10 YEARS TO UP TO 30 YEARS UNDER CERTAIN CONDITIONS;
AMENDING SECTION 85-2-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A
TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-407, MCA, is amended to read:

"85-2-407. (Temporary) Temporary changes in appropriation right. (1) Except as provided in
85-2-410, an appropriator may not make a temporary change in appropriation right for the appropriator's use
or another's use except with department approval in accordance with 85-2-402 and this section.

(2) Except as provided in subsection (9), a temporary change in appropriation right may be approved
for a period not to exceed 10 years. A temporary change in appropriation right may be approved for consecutive
or intermittent use.

(3) An authorization for a temporary change in appropriation right may be renewed by the department
for a period not to exceed 10 years. Renewal of an authorization for a temporary change in appropriation right
requires application to the department by the appropriator. Upon application, the department shall notify other
appropriators potentially affected by the renewal and shall allow 30 days for submission of new evidence of
adverse effects to other water rights. A temporary change authorization may not be renewed by the department
if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is
adversely affected.

(4) (a) During the term of the original temporary change authorization, the department may modify or
revoke its authorization for a temporary change if it determines that the right of an appropriator, other than an
appropriator described in subsection (7), is adversely affected.

(b) An appropriator, other than an appropriator identified in subsection (7), may object:

- 1 (i) during the initial temporary change application process;
- 2 (ii) during the temporary change renewal process; and
- 3 (iii) once during the term of the temporary change permit.
- 4 (5) The priority of appropriation for a temporary change in appropriation right is the same as the priority
- 5 of appropriation of the right that is temporarily changed.
- 6 (6) Neither a change in appropriation right nor any other authorization right is required for reversion of
- 7 the appropriation right to the permanent purpose, place of use, point of diversion, or place of storage after the
- 8 period for which a temporary change was authorized expires.
- 9 (7) A person issued a water use permit with a priority of appropriation after the date of filing of an
- 10 application for a temporary change in appropriation right under this section may not object to the exercise of the
- 11 temporary change according to its terms, the renewal of the authorization for the temporary change, or the
- 12 reversion of the appropriation right to its permanent purpose, place of use, point of diversion, or place of storage.
- 13 Persons described in this subsection must be notified of the existence of any temporary change authorizations
- 14 from the same source of supply.
- 15 (8) If a water right for which a temporary change has been approved is transferred as an appurtenance
- 16 of real property, the temporary change remains in effect unless another change in appropriation right is
- 17 authorized by the department.
- 18 (9) If the quantity of water that is subject to a temporary change is made available from the development
- 19 of a new water conservation or storage project, a temporary change in appropriation right pursuant to 85-2-408
- 20 or 85-2-439 may be approved for a period equal to the expected life of the project, not to exceed 30 years.
- 21 (Terminates June 30, 2005--sec. 3, Ch. 433, L. 2001.)
- 22 **85-2-407. (Effective July 1, 2005) Temporary changes in appropriation right.** (1) Except as provided
- 23 in 85-2-410, an appropriator may not make a temporary change in appropriation right for the appropriator's use
- 24 or another's use except with department approval in accordance with 85-2-402 and this section.
- 25 (2) A temporary change in appropriation right may be approved for a period not to exceed 10 years. A
- 26 temporary change in appropriation right may be approved for consecutive or intermittent use.
- 27 (3) An authorization for a temporary change in appropriation right may be renewed by the department
- 28 for a period not to exceed 10 years. Renewal of an authorization for a temporary change in appropriation right
- 29 requires application to the department by the appropriator. Upon application, the department shall notify other
- 30 appropriators potentially affected by the renewal and shall allow 30 days for submission of new evidence of

1 adverse effects to other water rights. A temporary change authorization may not be renewed by the department
2 if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is
3 adversely affected.

4 (4) (a) During the term of the original temporary change authorization, the department may modify or
5 revoke its authorization for a temporary change if it determines that the right of an appropriator, other than an
6 appropriator described in subsection (7), is adversely affected.

7 (b) An appropriator, other than an appropriator identified in subsection (7), may object:

8 (i) during the initial temporary change application process;

9 (ii) during the temporary change renewal process; and

10 (iii) once during the term of the temporary change permit.

11 (5) The priority of appropriation for a temporary change in appropriation right is the same as the priority
12 of appropriation of the right that is temporarily changed.

13 (6) Neither a change in appropriation right nor any other authorization right is required for reversion of
14 the appropriation right to the permanent purpose, place of use, point of diversion, or place of storage after the
15 period for which a temporary change was authorized expires.

16 (7) A person issued a water use permit with a priority of appropriation after the date of filing of an
17 application for a temporary change in appropriation right under this section may not object to the exercise of the
18 temporary change according to its terms, the renewal of the authorization for the temporary change, or the
19 reversion of the appropriation right to its permanent purpose, place of use, point of diversion, or place of storage.
20 Persons described in this subsection must be notified of the existence of any temporary change authorizations
21 from the same source of supply.

22 (8) If a water right for which a temporary change has been approved is transferred as an appurtenance
23 of real property, the temporary change remains in effect unless another change in appropriation right is
24 authorized by the department."

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26 **NEW SECTION. Section 2. Effective date.** [This act] is effective on passage and approval.

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28 **NEW SECTION. Section 3. Termination.** [This act] terminates June 30, 2005.

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